Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1407

ROBERT IVA GRIFFIN,

Petitioner,

vs.

STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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ROBERT IVA GRIFFIN,

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vs.

STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

The Petitioner, Robert Iva Griffin, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Court of Special Appeals of Maryland entered in this proceeding on September 24, 1979.

OPINION BELOW

The opinion of the Court of Special Appeals of Maryland was a per curiam opinion which will not be officially reported. (Appx. A. *infra*)

JURISDICTION

The opinion of the Court of Special Appeals of Maryland was entered on September 24, 1979 and the mandate issued on October 24, 1979. A timely petition for Writ of Certiorari to the Court of Appeals of Maryland was filed on November 8, 1979. The Court of Appeals of Maryland entered an Order denying the Petition for Writ of Certiorari on December 13, 1979. This Petition for Writ of Certiorari was filed within ninety days of the judgment of the Court of Appeals of Maryland. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

1. Does wearing apparel alone make a photographic spread so impermissibly suggestive as to be a denial of due process of law?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV

[N]or shall any State deprive any person of life, liberty or property, without due process of law . . . .

STATEMENT OF THE CASE

Petitioner, Robert Iva Griffin, was indicted on April 19, 1978 by the Grand Jury of the Circuit Court for Prince George's County, Maryland, and charged with assault with

intent to murder, assault with intent to maim, assault and battery, assault, and carrying a dangerous weapon openly with the intent to injure. After arraignment but well before trial and pursuant to the Maryland Rules of Procedure, Petitioner Griffin filed a Motion for Appropriate Relief requesting the suppression of all identification testimony in the case because it was the result of an impermissibly suggestive extrajudicial photographic array. The State of Maryland filed an answer to that Motion and hearings were held prior to trial on this Motion and on other pending Motions. The pre-trial Motion To Suppress the extrajudicial identification was denied.

The evidence indicated that on March 24, 1978 between midnight and one-thirty a.m., Danny Dwiers and Gerald Roper were in a bar in Prince George's County, Maryland, where they were drinking and playing games. Because of their disruptive behavior they were requested to leave the establishment.

Dwiers re-entered the establishment at closing time and Petitioner Griffin was assisting the management in closing the lounge. A confrontation resulted in which both Griffin and Dwiers left at the same time exchanging words. Griffin grabbed Dwiers by the arm after which the two men began wrestling and Griffin threw Dwiers on the hood of a car while holding his beard. The brief altercation ended when Dwiers punched Griffin in the face knocking him to the ground. Griffin was on the ground for about one minute and when he regained his footage he was dazed, groggy and talking insensibly.

The State's witnesses, Danny Dwiers and Gerald Roper, testified that Griffin then reached into his back pocket, rushed Dwiers and started jabbing at him. Dwiers stated that at no time did he see a knife and Roper admitted that he saw

neither a knife nor a stabbing. However, Dwiers was taken to Price George's General Hospital where he was treated for stab wounds. Both Dwiers and Roper testified at trial over defense objection that they had made a photographic identification of Petitioner Griffin prior to trial. Then each made in-court identifications of Griffin. Upon completion of the State's case Griffin's Motion for judgment of acquittal was denied.

The other eye witnesses, Theodore Collins, Wayne Clark, John Lumsden, Michale Jones, Earnest Shadrick, and Andres Francois testified that Griffin never stabbed nor had any further contact with Dwiers after Dwiers hit Griffin. After Griffin hit the ground, according to the defense witnesses, Dwiers became involved in a second fight with a man known only as "Danny" who was seen with a knife. Griffin testified categorically that he did not stab Dwiers.

The Motion for judgment of acquittal was renewed and again denied at the end of the entire case. Over Petitioner's objection, the State entered a *nolle prosequi* of Count 4, assault, and the jury found Griffin not guilty of assault with intent to murder but guilty of assault with intent to maim and guilty of carrying a dangerous weapon openly with the intent to injure.

Griffin filed a timely Motion for New Trial and after a hearing the Motion was denied on January 9, 1979 and Griffin was sentenced to the jurisdiction of the Division of Corrections of the State of Maryland for a period of five (5) years as to Count 2 and two (2) years as to Count 5, to run concurrent with Count 2.

Petitioner Griffin filed a timely Notice of Appeal to the Court of Special Appeals of Maryland on January 12, 1979. The case was briefed and argued before the Court of Special Appeals of Maryland which handed down its decision

affirming Petitioner Griffin's convictions on September 24, 1979. A timely petition for Writ of Certiorari with the Court of Appeals of Maryland was denied on December 13, 1979.

REASON FOR GRANTING THE WRIT

THIS COURT SHOULD DECIDE WHETHER OR NOT WEARING APPAREL ALONE MAKES A PHOTOGRAPHIC SPREAD SO IMPERMISSIBLY SUGGESTIE AS TO BE A DENIAL OF DUE PROCESS OF LAW.

Petitioner Griffin filed a pre-trial Motion to Suppress an extrajudicial photographic identification because the photographic array was "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification". *Simmons v. United States,* 390 U.S. 377, 384 (1968). Petitioner also contended that the impermissibly suggestive extrajudicial identification tainted the subsequent in-court identification which also should not have been admitted into evidence.

The initial description of the suspect involved in the incident received by the Price George's County Police Department was that of a "white male, 6 foot tall, thin build, with a beard brown in color, jean jacket and a hat". The police in this case showed both victims a six person photo array. An independent examination of the photo array reveals that Petitioner Griffin, alone, was pictured with an outer garment, specifically, a jacket; all the other individuals in the photo array had their arms bared in some way. At the hearing on the Motion to Supress Identification, witness Roper testified that he expected that one photograph in the

spread would show the man with the jacket who was involved in the incident.

Petitioner Griffin contends that his photo with a jean jacket was clearly so impermissibly suggestive as to create a very substantial likelihood of irreparable misidentification. *Simmons v. United States, supra,* 390 U.S. at 384; *Stovall v. Denno,* 388 U.S. 293, 302 (1967). The constitutional danger to be avoided is a police practice which emphasizes to the identifying witness that: "this is the man". *Foster v. California,* 394 U.S. 440 91969). The police in this case directed the attention to Griffin's picture in the photo spread by exploiting the description given them by the witness. The witnesses focused on Petitioner Griffin's photograph because of the readily distinguishable wearing apparel; the jean jacket worn by Griffin served as a "tie-breaker". The presence of the jacket alone distinguished Griffin's picture from the others in the array. The police engaged in a singling out process by accentuating wearing apparel known to be connected with the crime. See, *Crume v. Beto,* 383 F.2d 36 (5th Cir. 1957), *cert. denied,* 395 U.S. 964 (1969).

This Court's most recent treatment of identification procedures held that "reliability is the linchpin in determining the admissibility of identification testimony". *Manson v. Braithwaite,* 432 U.S. 98, 114 (1977). The intoxicated state of both witnesses, Dwiers and Roper, in the early morning hours of March 24, 1978 severely limited their ability to make reliable or crediable observations. Confrontation with Petitioner Griffin and/or the other assailant spanned only a fleeting moment or two. Fighting in the bar and on the parking lot also hampered the opportunity to view the individuals in question. Under the totality of the circumstances Petitioner Griffin asserts that the identification and testimony of Dwiers and Roper was unreliable because the objective and subjective conditions of March 24, 1978 were conducive to misidentification and, because it was clearly tainted by an unnecessarily and impermissible extrajudicial photographic array.

Thus, this case presents a very interesting issue of whether or not wearing apparel alone is a sufficient indicia to vitiate an otherwise constitutionally permissible photographic array. This Court should issue a Writ of Certiorari to the Court of Special Appeals of Maryland to decide this very important issue of constitutional law.

CONCLUSION

For these reasons, a Writ of Certiorari should be issued to review the judgment and opinion of the Court of Special Appeals of Maryland.

Respectfully submitted,

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APPENDIX A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 63

September Term, 1979

ROBERT IVA GRIFFIN

v.

STATE OF MARYLAND

Gilbert, C.J.,
Wilner,
Couch,
JJ.

Per Curiam

Filed: September 24, 1979

Robert Iva Griffin was convicted by a jury in the Circuit Court for Prince George's County of assault with intent to main, disfigure and disable (a violation of Md. Ann. Code art. 27, §386), and carrying a dangerous weapon openly with intent to injure a person (a violation of Md. Ann. Code art. 27, §36(a)). Griffin was sentenced by Judge Ernest A. Loveless, Jr., the trial judge, to concurrent terms of five and two years respectively.

Griffin noted a timely appeal to this Court where he asserts that the judgments of the circuit court should be reversed for three (3) reasons, namely, 1) The photographic identification of the appellant by the State's witnesses was impermissibly suggestive; 2) Because the jury found the appellant not guilty of assault with intent to murder, it could not find him guilty of assault with intent to main; 3) The evidence does not support the deadly weapon charge.

A reading of the record shows that on March 24, 1978, between the hours of 12 Midnight and 1:30 a.m., Danny Dwiers and Gerald Roper entered Jimmy Comber's lounge in Prince George's County. The two men had been drinking. While at the lounge Dwiers and Roper got into a pinball gambling game. Because of their raucous conduct, they were asked to leave. Dwiers went back into the lounge around 2 a.m. The appellant, who was apparently assisting the management in telling the patrons that the lounge was closing and that they should leave, approached Dwiers. Appellant asked Dwiers to leave, and as the two men went out the door they were exchanging words. Words led to fisticuffs, with appellant's throwing Dwiers upon the hood of a vehicle and holding Dwiers's beard. Dwiers hit appellant in the face and knocked him to the ground. The State produced evidence that appellant got up, reached into his back pocket, rushed Dwiers, and started jabbing at him. Dwiers did not

see a knife nor did Roper see it; yet Dwiers was stabbed five (5) times. A defense witness testified that Dwiers became involved in a second altercation with a person known as "Danny" and that "Danny" had the knife. "Danny" was not otherwise identified. Dwiers fled the scene and went to the Prince George's Hospital and Medical Center where he was treated for stab wounds. Appellant was subsequently charged.

I.

Appellant maintains that he was denied due process of law by both the pretrial identification procedure, because a substantial likelihood of an irreparable mistaken identification was created by the State's use of an impermissibly suggestive photographic array, and by admission into evidence at trial of both testimony regarding the extrajudicial identification, as well as the in-court identification and testimony thereunto relating. The challenged identification involves an array of six (6) photographs in which appellant alone appears in an army-type fatigue jacket, a garment which was part of the description furnished to the police by the identifying witness,[1] and which was allegedly readily distinguishable.

Appellant initially attacked the identification procedure by filing a pre-trial motion to suppress the extrajudicial identification[2] and all evidence derived from the photographic array, *i.e.*, subsequent identification and relative testimony.

---

[1]The witness, Gerald Roper, described his companion's assailant as a male, almost six-foot tall, thin build, with beard, brown in color, with *jean jacket* and a hat.

[2]We note in passing that this motion was not timely filed as required pursuant to Md. Rule 726. No objection was made by the State, and, therefore, the objection is waived.

The State's argument is essentially that because the appellant's pre-trial motion to suppress was denied, objection at trial to the introduction of identification evidence was necessary to preserve the matter for our review, and further that while evidentiary objections were made in every appropriate instance, they were subsequently waived when appellant independently adduced evidence on the exact same issue to which he had previously interposed an objection; namely, the identity of himself as not being the criminal agent or culprit who stabbed the victim.

We disagree. Md. Rule 736, § g(2) preserves for appeal the denial of a pre-trial suppression motion without anything more than the appeal of a conviction. The issue is properly before us.

It is well settled that extrajudicial identification evidence, such as obtained by photographic array, is subject to exclusion at trial, in appropriate cases, to insure compliance with a defendant's due process right to an essentially fair confrontation. "Fairness" can be abridged when the procedure is so impermissibly suggestive as to give rise to a substantial likelihood of an irreparable mistaken identification. *Simmons v. United States,* 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968); *Conway v. State,* 15 Md. App. 198, 289 A.2d 862, *cert. denied,* 413 U.S. 920 (1972).

Similarly, in-court testimony as to the out-of-court identification and an in-court identification can be fatally tainted by a constitutionally defective identification procedure. It will be barred from admission into evidence if not substantiated by an independent source. *Simmons v. United State, supra. See Manson v. Brathwaite,* 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977); *Conway v. State, supra. See also Dobson v State,* 24 Md. App. 644, 335 A.2d 124, *cert. denied,* 275 Md. 747 (1975). Analysis of an impermissibly suggestive pre-trial identification begins, logically, with a determination as to whether the procedure was suggestive. Suggestiveness is tested by considering whether there is a substantial likelihood of a mistaken identification. *Simmons v. United States, supra.*

If impermissive suggestiveness is found, it is then necessary to determine the reliability of the identifications, for assurance of reliability can vitiate a defective identification procedure; trustworthiness satisfies due process fairness.[3] "Reliability is the linchpin in determining the admissibility of identification testimony." *Manson v. Brathwaite, supra.* The reliability of an identification rests on a number of factors and is governed by a "totality of the circumstances test." *Neil v. Biggers,* 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed2d 401 (1972). *See Manson v. Brathwaite, supra; Foster v. State,* 272 Md. 273, 323 A.2d 419, *cert. denied,* 955 S.Ct. 520, 419 U.S. 1036, 42 L.Ed.2d 311 (1974); *Godwin v. State,* 38 Md. App. 716, 382 A.2d 596 (1977), *rev'd and remanded,* ____ Md. ____ (1978), *aff'd in part,* 41 Md. App. 233, 395 A.2d 1230 (1979); *Bartley v. State,* 322 Md. App. 283, 362 A.2d 101 (1976); *Dobson v. State,* 24 Md. App. 644, 335 A.2d 124, *cert. denied,* 275 Md. 747 (1975).

Our constitutionally mandated independent review of the record is limited to that evidence introduced at the pre-trial hearing upon which the judge based his ruling. *Dobson v. State, supra.* In *Dobson* the victim made an identification

[3]It is important to note that a constitutionally defective procedure is one which is impermissibly suggestive. Some circuit courts ended inquiry at this point and excluded all identity evidence, regardless of reliability, under a "per se" rule. The Court, in Manson v. Brathwaite, *supra,* has clarified the ambiguity by rejecting this approach and holding that an unconstitutionally suggestive procedure may be validated where there are assurances of reliability for the identification.

from an array of fifteen (15) photographs in which only the appellant was shown to be wearing glasses. While the victim furnished a vague description to the police, he knew his abductor had worn glasses. The photographic array was held to be impermissibly suggestive, but after reviewing the evidence presented at the suppression hearing, we concluded no due process violation existed because "when the total evidence is weighed on the scale of *Biggers,* there exists substantial reliability for the identification, and the identification procedure did not give rise to a very substantial likelihood of misidentification." We pointed to such factors as one lengthy opportunity to view the defendant coupled with numerous shorter views, as well as assurances of certainty by the identifying witness.

The instant appeal provides us with a far stronger case on the State's behalf than did *Dobson.* We agree with the findings of the trial court that the photographic array was not suggestive, and that the witnesses "were not in any way led into making this identification." All six (6) photographs depicted bearded, white, males, similar in height and with near-shoulder length dark hair. The outer garment, as worn by the appellant when photographed, would be more accurately described as a heavy shirt, rather than a "jean jacket." The record indicates testimony by two witnesses, both of whom made the out-of-court identification, to the effect that they were not affected by anything other than appearance, *i.e.,* not the garment. The witness who furnished a description of the appellant to police stated during the pretrial hearing, "I was not looking for a jacket. I was looking for the man's face." The victim stated he was not paying attention to whether anyone had a jacket on, he was looking at the faces. Moreover, he had no recollection that his assailant was wearing a jacket on the night of the crime.

Even if, as appellant contends, the photographic array was unnecessarily suggestive, an examination of the circumstances surrounding the identification shows there was little chance of misidentification. *Biggers* articulates the following reliability factors:

> "[1] the opportunity of the witness to view the criminal at the time of the crime,
>
> [2] the witness' degree of attention [to the criminal],
>
> [3] the accuracy of the witness' prior description of criminal,
>
> [4] the level of certainty demonstrated by the witness at the confrontation,
>
> [5] the length of time between the crime and the confrontation."

Applying the *Biggers'* factors to the testimony at the suppression hearing, we observe that:

(1) Both identifying witnesses had an opportunity to view Griffin outside the bar for several minutes during the course of the fight.

(2) The victim, Dwiers, was in close proximity to Griffin during the fight and, therefore, had an opportunity to observe his features at close range.

(3) The description of the assailant given to the police by Dwiers's companion, Roper, matched Griffin's appearance on the night of the alleged crime.

(4) Neither of the witnesses played any doubt about their respective identification of Griffin.

(5) Dwiers's identification of Griffin was made five (5) days after the incident, and Roper's identification was made approximately three (3) weeks after the crime.

We are convinced that the record amply demonstrates identification evidence independent of that which may have been derived from the extrajudicial identification. The

witness and the appellant, himself, testified that appellant was a participant in the fight.

II.

Appellant next contends that the evidence was legally insufficient to support a conviction for assault with intent to main. Specifically, he argues that an acquittal on the charge of assault with the intent to murder precludes the possibility of presenting a complete evidentiary case for the charge on which he was convicted. He reasons that because of the acquittal we are required to infer that the jury found the absence of an intent to maim. The dubious logic of that reasoning is as follows: Proof of intent to commit grievous bodily harm satisfies the prerequisite intent to sustain a conviction for both assault with the intent to murder, *Brooks v. State,* 38 Md. App. 550, 381 A.2d 718, *aff'd,* 284 Md. 416, 397 A.2d 596 (1979), and assault with the intent to maim. *Hoes v. State,* 35 Md. App. 61, 368 A.2d 1080, *cert. denied,* 280 Md. 731 (1977). Acquittal on the former charge necessarily implies that the jury believed the State failed to prove an intent to commit grievous bodily harm. Appellant then concludes that an impossibility of a sufficient evidence exists because, allegedly, the burden of proof is the same for both crimes.

Reduced to syllogism the appellant's logic appears to be:

1) Appellant was charged with assault with intent to murder and assault with intent to maim.
2) Assault with intent to murder and assault with intent to maim require the same proof.
3) Appellant was acquitted of assault with intent to murder. Therefore, appellant must be acquitted of the assault with intent to maim.

We think the gist of appellant's argument is that an inconsistent jury verdict is barred by law. We note that even if an inconsistency between the acquittal and conviction existed, it would not necessitate a reversal. The Court of Appeals so said in *Leet v. State,* 203 Md. 285, 100 A.2d 789 (1953):

> "While it is true that a finding of *guilt* on two inconsistent counts will be declared invalid in Maryland, *Heinze v. State,* 184 Md. 613, 617, 42 A.2d 128, 130 [1945], it does not follow that a conviction on one count may not stand because of an inconsistent acquittal on another count. In answer to a contention almost identical to the one advanced here, Justice Holmes said; 'Consistency in a verdict is not necessary. Each count in an indictment is regarded as if it was a separate indictment * * *. If separate indictments had been presented against the defendant for possession and for maintenance of a nuisance, and had been separately tried, the same evidence being offered in support of each, an acquittal on one could not be pleaded as *res juudicata* of the other. Where the offenses are separately charged in the counts of a single indictment the same rule must hold. As was said in *Steckler v. United States,* 7 F.2d 59, 60 [1925]: "The most that can be said in such cases is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt. We interpret the acquittal as no more than their assumption of a power which they had no right to exercise, but to which they were disposed through lenity." *Compare Horning v. District of Columbia,* 254 U.S. 135 [1920]. That the verdict may have been the result of compromise, or of a mistake on the part of the jury, is possible. But verdicts cannot be upset by speculation or inquiry into such matters.' *Dunn v. United States,* 1284 U.S. 390, 393 [1932]; *See also Frisina v. United States,* 49

F.2d 733, 735 [1933] (general rule before the *Dunn* case); *Pilgreen v. United States,* 157 F.2d 427, 428 [1946]; *United States v. Delasco* [*sic*], 184 F.2d 746, 749 [n1950]."

See also Ford v. State, 274 Md. 546, 552-53, 337 A.2d 81, 85 (1974) and cases cited therein. Simply stated, an acquittal by jury on a particular count of an indictment does not mean that the verdict was based on their adoption of a particular legal theory, *Goldsborough v. State,* 12 Md. App. 346, 357, 278 A.2d 623, 629 (1971).

Md. Ann. Code art. 27, §386 provides in pertinent part:

"If any person . . . shall unlawfully and maliciously stab, cut or wound any person, or shall assault or beat any person, with intent to maim, disfigure or disable such person, . . . every such offender . . . shall be guilty of a felony. . . ."

The trial judge correctly instructed the jury that to establish a case of assault with intent to murder, the State must show that if death had ensued, the killing would have constituted murder. *See, e.g., James v. State,* 31 Md. App. 666, 358 .2d 595, *cert. denied,* 278 Md. 725 (1976). Evidence of an intent to commit a grievous bodily harm is sufficient to support a conviction. *James v. State, supra; McFadden v. State,* 2 Md. App. 725, 237 A.2d 93, *cert. denied,* 250 Md. 732 (1968). The intent to commit grievous bodily harm is not an element of assault with intent to maim. The jury, in the case now before us, could have found that appellant intended only to disable or disfigure the victim. If it so found, then there would be nothing inconsistent in its verdict.

In our review of this case, however, we are not concerned with how the jury reached their ultimate conclusion, but whether there was legally sufficient evidence presented, a trial, from which the jury could have reasonably found the

appellant guilty of assault with intent to maim.

The elements necessary for assault with intent to maim include an assault on the victim, by the appellant, with an intent to disable, disfigure, maim, cut, or stab.

There was undisputed evidence that the appellant and Dwiers engaged in a fight. Two of the State's witnesses testified that during the course of the fight appellant reached into his back pocket, withdrew something therefrom, rushed Dwiers, and jabbed him several times. There was also undisputed evidence that Dwiers was stabbed, even though he testified that he did not see a knife when the appellant rushed and poked him, but he felt "blood gushing out." Additional testimony established that a crowd of bystanders saw the scuffle and a defense blow struck by Dwiers, which knocked apellant to the ground. We think the evidence was sufficient for the jury to conclude, as it did, that the appellant committed an assault upon Dwiers with the intent to maim him.

Appellant's final contention is that the evidence presented at trial was insufficient to support a conviction of carrying a weapon openly with intent to injure. Md. Ann. Code art. 27, §36.

To sustain a conviction of carrying a weapon openly with intent to injure, the State must show the carrying of a weapon and that the weapon was carried openly, with the intent or purpose of injuring any person in an unlawful manner. *Brooks v. State,* 38 Md. App. 550, 552-53, 381 A.2d 718, 720 (1978), *aff'd,* 284 Md. 416, 397 A.2d 596 (1979).

We conclude that there was legally sufficient evidence to support the jury verdict on this count. Although Dwiers and Roper testified that they never actually saw a weapon in appellant's hand, both witnesses testified that appellant reached into his pocket and then "rushed" Dwiers and

jabbed him. From this testimony, considered with the undisputed evidence of Dwiers stab wounds, it was clearly permissible for the jury to infer that the appellant was carrying a weapon, and that when he "rushed" Dwiers, he carried it openly with the purpose of injuring someone in an unlawful manner. We conclude, therefore, that the trial judge properly denied the appellant's motion for acquittal on this count.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

APPENDIX B

ROBERT IVA GRIFFIN

v.

STATE OF MARYLAND

In the
Court of Appeals
of Maryland

Petition Docket No. 327
September Term, 1979
(No. 63, September Term, 1979
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and is is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: December 13, 1979.